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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.M. et al., Persons Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

K.M.,

Defendant and Appellant.

D074969

(Super. Ct. No. J519810A-B)

APPEAL from orders of the Superior Court of San Diego County, Marian F.

Gaston, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Patrice Plattner-Grainger, Deputy County Counsel, for Plaintiff and Respondent.

K.M., the noncustodial father (Father) of J.M. and A.M., appeals from orders of the juvenile court finding it would be detrimental to place the children with him after removing them from the custody of their mother (Mother). He contends the orders must be reversed because the juvenile court failed to provide an adequate explanation for its finding that it would be detrimental to place the children in his care, as required by the applicable statute, Welfare and Institutions Code section 361.2<sup>1</sup>. We conclude the juvenile court did state some reasoning for its finding, substantial evidence supports further implied findings, and any failure by the court to adequately express its reasoning on the record was harmless. We therefore affirm the orders.

#### FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father have two children together, J.M. and A.M. (the children). In August 2017, Mother contacted San Diego County Health and Human Services Agency (the Agency) seeking a referral for a shelter after Father punched her in the face and pushed her head back until she could not breathe. The children, approximately five and four years old at the time, were in the home during the incident but did not witness the abuse. Mother indicated Father had been abusing her for the past six years. He had been arrested two to three years ago after dragging Mother into the street, but she had declined

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

to pursue charges. Mother tested negative for controlled substances and provided verification from her psychiatrist she was compliant with her medication and therapy, and the Agency determined the children were safe in her care at that time.

Thereafter, Mother sought a restraining order against Father as well as full custody of the children. In the petition, Mother detailed multiple incidents of physical abuse, death threats, and stalking. In October, the family court found Mother's allegations of domestic violence credible, issued the restraining order against Father, awarded Mother full physical and legal custody, and limited Father to supervised visitation.

A few months later, the Agency began receiving reports regarding the safety of the children in Mother's care. The reports indicated Mother was living with a boyfriend who was abusing her and possibly using her for prostitution, the children had witnessed physical abuse, Mother was schizophrenic and was not taking her medication, and Mother was hosting parties and using marijuana, methamphetamine, and heroin while the children were in the home. In one instance, Mother's roommate had to take a hypodermic needle used for heroin away from one of the children. In addition, the children were very skinny and hungry and there had been no food in the home for up to 10 days at a time. There were also reports Mother screamed at and hit the children. Father had picked up the children for a couple of hours on June 1, 2018, but brought them back and left them with Mother.

The Agency initially had trouble contacting Mother, so Father agreed to meet an Agency social worker at Mother's apartment on June 6, 2018, in an effort to persuade Mother to speak with the Agency. When Mother saw Father with the social worker, she

said he was stalking her, was abusive, and was "just trying to get to her any way [he] could." She also alleged Father had recently slashed her tires. However, she did agree to speak with the social worker.

Mother told the social worker the children were not with her because she had taken them to a safe place and, after some prodding, indicated they were with the maternal grandmother (MGM). She admitted she had recently used methamphetamines in the bathroom of the apartment while the children were home but said that Father had supplied the drugs and used them with her. She denied allegations her boyfriend was abusive. She admitted he had a criminal history related to prostitution but stated he was complying with probation and drug tested regularly. The social worker noted there were plenty of clothes in the children's rooms and plenty of food in the kitchen.

Father told the Agency he was concerned about Mother's drug use and abusive boyfriend. He had contact with the children the previous weekend and was planning to seek custody through the family court. He alleged Mother's previous allegations of abuse against him were false, but stated he was nevertheless participating in a domestic violence group.

MGM brought the children to the Agency's offices the following day. The children were clean and dressed appropriately and did not appear skinny in an unhealthy way. MGM said the children had been with her since the Wednesday before Memorial Day because Mother "freaked out" after Father gave her drugs. She had lived with Mother and Father for approximately five months in early 2017 and Father was "very abusive," called the children names, and frequently threatened Mother. She believed

Father slashed Mother's tires the previous week but did not have proof and recommended the Agency test Father for drug use.

The social worker also spoke with the children. J.M. said Father had hit him in the stomach and it hurt but denied any other physical abuse by either parent. He reported Mother fought with her boyfriend and with Father and demonstrated a slapping motion with his hands in the air. He said Mother got hurt on the lip and broke a window with her hand. He denied witnessing any drug use or seeing any drug paraphernalia. A.M. was too young to provide any specific information.

The Agency asked Father to drug test on June 15, but he refused. On June 14, Mother filed a request for a restraining order against Father. In the attached declaration, Mother alleged Father pounded on her door demanding to be let in and telling her he had methamphetamine for her and, on another occasion, refused to leave after visiting with the children and pressured her into using methamphetamine with him. However, Mother failed to appear at the hearing, so the court did not grant the request. The Agency interviewed a neighbor who confirmed Father had shown up at Mother's home on several occasions, cursing, kicking, and banging on Mother's door.

On July 5, MGM reported she had tried to visit Mother with the children, but Mother had a black eye, was clearly using drugs, and would not let them into the apartment. She told the Agency she would not return the children to Mother as she did not want to expose them to drug use. Father agreed to drug test on July 6, and the results were negative.

The following week, Mother contacted the Agency and asked for paperwork to allow MGM to care for the children on an ongoing basis. She initially said she could parent the children herself but was taking advantage of the situation, but confirmed she was using drugs and had used methamphetamine as recently as July 7. She later said she realized she needed help, would be concerned for the safety of the children if they were in her care, and had no plans to pick them up.

Father filed a request with the family court for an ex parte custody hearing on July 23, and the hearing was set for July 27. On the day of the hearing, Mother called the social worker upset and said she did not want MGM to care for her children any longer. The social worker convinced Mother to meet with her, MGM, and the children at the Agency offices and, when they arrived, Mother was acting paranoid and erratic and said MGM was calling her names and sending people to the house to give her drugs. She said the family court had not made any rulings, she still had full custody of the children, and she no longer wanted MGM to care for them. When the social worker told Mother the children were not safe in her care until she was assessed for mental health and got help for her drug use, Mother left abruptly, taking the children with her. The Agency notified security and a police officer located Mother and the children on the street and escorted them back to the offices.

Mother remained adamant she no longer wanted the children to stay with MGM, so the Agency took custody and filed dependency petitions for both children a few days later. The petitions alleged Mother was unable to provide care due to substance abuse, pursuant to section 300, subdivision (b). The juvenile court found the Agency had made

a prima facie showing on the petitions and the children were detained in a licensed foster home.

In its jurisdiction and disposition report dated August 22, 2018, the Agency reported Father denied the allegations in the petitions and denied giving Mother drugs. He said Mother filed the most recent restraining order because her boyfriend was jealous of him. He admitted to having a criminal history, including a DUI (driving under the influence) and battery of a police officer in 2012. He told the social worker he had never experimented with any drugs and had submitted to a drug test on August 8, 2018, which produced clean results. However, given the allegations regarding Father's involvement with drugs and the well-documented history of domestic violence, the Agency was concerned the children would be at risk of suffering serious physical harm in his care and recommended they remain in their foster placement.

At the initial jurisdiction and disposition hearing, the parents contested jurisdiction and the juvenile court set the matter for trial. The court ordered supervised visitation for both parents and, in an addendum report submitted before trial, the Agency noted some issues with Father's visits. Father called J.M. a "dummy" and was visibly frustrated when the child did not trace letters or play with the toy he had chosen. He also made concerning comments about Mother in front of the children and told them all women were "psycho and crazy." The social worker believed Father would benefit from the assistance of a visitation coach, but Father declined to work with one voluntarily. The Agency maintained its concerns regarding Father and its previous recommendation the children remain in an out-of-home placement.

At the outset of the trial and based on an agreement amongst the parties, the Agency moved to amend the petition and Mother submitted to the court's jurisdiction and waived her right to a trial. Father elected to proceed by way of documents and the court admitted the Agency's reports into evidence. The social worker was available for cross-examination, but Father did not ask her any questions, call any other witnesses, or present any affirmative evidence. Father argued Mother's allegations against him were not credible and asked the court to return the children to his care.

The juvenile court found the allegations in the amended petitions true by clear and convincing evidence. The petitions included the following statements regarding Father: "The father failed or was unable to protect the child from the mother's methamphetamine use. Further, the mother and father have a history of domestic violence whereby in October 2017 the mother obtained a permanent restraining order against the father for multiple incidences of violence."

After some discussion regarding visitation, the court went on to make additional findings, noting all of its decisions were based on the evidence submitted at trial. The court found there was clear and convincing evidence the children should continue to be removed from Mother and "it would be detrimental to place [the children] with [Father] pursuant to . . . section 361.2." In its written orders, dated October 16, 2018, the court found clear and convincing evidence placement with Father would be detrimental to the children "as stated on the record under [section] 361.2".

Father appeals.



## DISCUSSION

When the juvenile court removes a child from the care of a custodial parent and there exists another noncustodial parent who wishes to assume custody of the child, section 361.2 requires the court to place the child with that parent "unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subd. (a).) In accordance with subdivision (c) of the statute, "[t]he court shall make a finding either in writing or on the record of the basis for its determination" regarding placement of the child with the noncustodial parent. (*Id.*, subd. (c).)

An appellate court reviews the juvenile court's finding of detriment pursuant to section 361.2 for substantial evidence. (*In re Liam L.* (2015) 240 Cal.App.4th 1068, 1087.) "The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to other appeals. If there is substantial evidence to support the findings of the juvenile court, we uphold those findings. [Citation.] We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court's order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence." (*Ibid.*)

Here, Father contends the juvenile court's orders must be reversed because the court did not specify whether the detriment would be to the safety, protection, or physical

or emotional well-being of the children and did not articulate a basis for its finding as required by section 361.2, subdivision (c). We disagree.

First, Father focuses narrowly on the juvenile court's oral and written statements regarding detriment, but when viewed in the broader context of the court's entire ruling, the court did provide some basis for its finding. The juvenile court began by stating, "[b]ased on the uncontroverted evidence, I do find the petition is true by clear and convincing evidence." The petition for each child, in turn, included allegations Father had engaged in domestic violence against Mother and had failed to protect the children from Mother's substance abuse. Thereafter, the juvenile court continued, stating, "today's decisions are based on all of the evidence . . . submitted today" and made a number of additional findings, including, "it would be detrimental to place [the children] with [Father] pursuant to . . . section 361.2." Thus, although the court did not state an independent basis for its finding that placing the children in Father's care would be detrimental, the court had stated all of its findings were based on the uncontroverted evidence at trial and had made specific factual findings regarding Father's propensity for domestic violence and inability to protect the children.

Moreover, to the extent the juvenile court's more general statement regarding the basis of its findings was inadequate, there is ample evidence in the record to support an implied finding. (See *In re Andrea G.* (1990) 221 Cal.App.3d 547, 554-555 [no practical purpose in remanding a case where record contained ample evidence to support implied finding].) The Agency reports admitted at trial included family court records indicating Mother had obtained a restraining order against Father for domestic violence and, finding

Mother's allegations credible, the family court had given Mother full custody of the children and had restricted Father to supervised visitation. Those records, alone, are sufficient to support the juvenile court's finding of detriment, as well as additional implied findings regarding the basis for that finding. (See, e.g., *In re Nickolas T.* (2013) 217 Cal.App.4th 1492, 1506 [in many cases, "the noncustodial parent's history and circumstance will clearly warrant a detriment finding"].)

In addition, the social worker's reports indicated Father had picked up the children and then returned them to Mother's care shortly before the Agency intervened despite concerns about her drug use and abusive boyfriend, and the social worker expressed numerous concerns regarding Father's ability to safely parent the children. MGM told the social worker Father was "very abusive," called the children names, and frequently threatened Mother, and J.M. reported Father fought with Mother and hit him in the stomach, causing pain. The social worker also raised concerns regarding Father's involvement with drugs, despite two clean drug tests, and noted Father made inappropriate comments and called J.M. a "dummy" during a recent supervised visitation. Father offered no affirmative evidence to contradict these reports and made no attempt to cross-examine the social worker. Thus, the social worker's reports also provide additional evidence and further implied findings to support the juvenile court's conclusion returning the children to Father would be detrimental.

Father asserts this court should not make such implied findings given the statute's express requirement that the court make "make a finding either in writing or on the record of the basis for its determination." (§ 361.2, subd. (c).) Father relies on two cases, *In re*

*Abram L.* (2013) 219 Cal.App.4th 452 (*Abram L.*) and *In re J.S.* (2011) 196 Cal.App.4th 1069 (*J.S.*), but neither supports Father's argument. In *Abram L.*, the appellate court concluded the juvenile court erroneously based its reasoning on a different statute and, in that context, it would be improper for the appellate court to infer a finding under section 361.2. (*Abrams L.*, at p. 462.) Here, there is no dispute the juvenile court conducted its analysis and made its finding pursuant to section 361.2, subdivision (a).

In *J.S.*, the appellate court refused to make an implied finding where the juvenile court had made clear it was placing the child with the noncustodial parent but failed to make any formal finding pursuant to section 361.2. (*J.S.*, *supra*, 196 Cal.App.4th at pp. 1076, 1078.) However, the appellate court found the juvenile court's failure to make such a finding was harmless error as there was no reasonable probability the juvenile court would have reached a different conclusion had it complied with the statutory requirement to make an express finding. (*Id.* at p. 1079.) Here, the court did make an express finding of detriment under the statute but, to the extent it did not provide an adequate basis for that finding on the record, there is similarly no reasonable probability the court would have reached a different conclusion had it made a more express or detailed statement concerning the basis for its determination. As discussed, the uncontroverted evidence at trial established Father had failed to protect and posed a danger to the safety, physical and emotional well-being of the children.

DISPOSITION

The orders are affirmed.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

NARES, J.